

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN BASIC PROPERTY INSURANCE
ASSOCIATION,

UNPUBLISHED
April 15, 2003

Plaintiff-Appellant,

v

LARYSSA POPE, Individually and as Next Friend
of ALDONTÉ POPE, a Minor, ALVIN E. SMITH,
and MARGO N. SMITH,

No. 238353
Wayne Circuit Court
LC No. 00-035324-CK

Defendants-Appellees.

Before: Jansen, P.J. and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying its motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Laryssa Pope purchased a home from defendants Alvin E. Smith and Margo N. Smith on a land contract. Laryssa Pope resided in the home with her minor son Aldonte Pope. Plaintiff insured the home under a policy that designated Laryssa Pope as a named insured and the Smiths as additional named insureds. In the policy the terms "you" and "your" referred to the named insureds. The policy defined "Insured" as "you and residents of your household" who were relatives, or persons under the age of twenty-one in the care of the named insureds. The policy excluded coverage for "bodily injury" to "you or an 'insured' within the meaning of 'insured' as defined."

Aldonte Pope became ill after ingesting a substance containing lead found in the home. Laryssa Pope, individually and as next friend of Aldonte Pope, filed suit against the Smiths alleging negligence and misrepresentation regarding the condition of the home.¹ The Smiths tendered defense of the underlying suit to plaintiff.

Plaintiff filed a declaratory action seeking a declaration that its policy did not afford coverage for the Smiths as it excluded liability coverage for bodily injury claims brought by an

¹ *Pope v Smith*, Wayne County Circuit Court Docket No. 00-019048-NI.

insured against another insured. Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the language of the policy was clear and unambiguous, and that the policy did not indemnify the Smiths, who were named insureds, against liability asserted by Laryssa Pope on behalf of Aldonte Pope, another insured. The trial court denied plaintiff's motion, concluding that the policy did not clearly state that an insured was not afforded coverage if suit was brought by another, unrelated insured. The trial court declared that the policy afforded coverage to the Smiths for the claims brought against them on behalf of Aldonte Pope.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mut Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Nikkel, supra*, 566-567. Ambiguities are to be construed against the insurer. *State Farm Mut Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996). Exclusionary clauses are to be strictly construed against the insurer. *Twichel v MIC General Ins Corp*, 251 Mich App 476, 488; 650 NW2d 428 (2002). However, clear and specific exclusions must be enforced. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

Plaintiff argues that the trial court erred by denying its motion for summary disposition. Plaintiff contends that the focus of the exclusion at issue is on the party who has suffered the bodily injury and is asserting the claim, and argues that the policy clearly excludes coverage for any insured for bodily injury claimed by another insured. We agree and reverse the trial court's decision. An exclusion of coverage for injuries to an insured or residents of an insured's household does not violate public policy, and is enforceable. *Farm Bureau Mut Ins Co v Moore*, 190 Mich App 115, 117; 475 NW2d 375 (1991). Here, the policy excludes coverage for bodily injury to the named insured or to any other person who meets the definition of an "insured" person. The policy defines an "insured" as either the named insured or members of the named insured's household. The policy refers to the named insured's household for the purpose of defining who is an insured under the policy. No language in the policy indicates that the reference in the exclusion to the named insured's household serves to limit the exclusion of coverage for bodily injury claims to those bodily injury claims asserted by a member of the named insured's household, and to expose a named insured to liability for a bodily injury claim asserted by another, non-related insured. No language indicates that the exclusionary clause is to be interpreted differently depending on whether the insured claiming the benefit of the exclusion is related or unrelated to the insured who is making the claim. The language of the policy is clear and unambiguous, and thus fairly admits of but one interpretation. *Nikkel, supra*, 566. The plain and unambiguous language of the exclusion in plaintiff's policy did not afford liability coverage for the Smiths against the claims asserted on behalf of Aldonte Pope in the underlying suit. The trial court was required to enforce the exclusion, and could not create an ambiguity where none existed in order to apply the reasonable expectations rule. *McKusick, supra*, 333,

338. Plaintiff was entitled to summary disposition and a declaration that it had no duty to defend or indemnify the Smiths in the underlying suit.

Reversed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood